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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1036

JULIE CHRISTOFFERSON,

Petitioner,

—v.—

CHURCH OF SCIENTOLOGY MISSION OF DAVIS; and MARTIN SAMUELS,

Respondents.

MEMORANDUM OF RESPONDENTS IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Petitioner Christofferson[1] (No. 82-1036) seeks review of two aspects of the opinion of the Oregon Court of Appeals concerning the application of the First Amendment to Christofferson's state law fraud claim. Christofferson's petition must be denied because, insofar as she challenges the judgment of the Oregon Court of Appeals, that judgment rests on independent state law grounds. Nevertheless, Christofferson's petition does highlight the substantial questions raised by the petition of the Mission of Davis (No. 82-1025), which should be granted.

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1 We shall refer to the parties as "Christofferson" and "The Mission of Davis", rather than petitioner and respondent, to avoid confusion due to the fact that both parties filed petitions.

1. The Judgment of the Oregon Court of Appeals, Insofar As It is Challenged by Christofferson, Rests on Independent State Law Grounds

The Oregon Court of Appeals reversed the judgment on the fraud count against the Mission of Davis and Martin Samuels on both federal constitutional and state law grounds. On constitutional grounds, the court held that it was error for the trial court to have instructed the jury that it should determine the sincerity or good faith religious beliefs of the religious organization defendants (A 106-A 112).[2] The Court of Appeals rested its determination on both the First Amendment to the United States Constitution and Article I, §§ 2 and 3, of the Oregon Constitution. (A-135, n.23). It further held that the trial court committed reversible error in excluding from evidence certain exhibits offered by the defendants to show the state of mind of the person who allegedly made the fraudulent representations (A 114-A 116), and in refusing to give a requested instruction on the definition of the term "material fact", which is an essential element of fraud under Oregon law (A 118-A 119).

Thus, the judgment of the Oregon Court of Appeals, insofar as it is challenged by Christofferson, rests on independent state law grounds. No matter what action this Court were to take on Christofferson's petition, a new trial would be required.[3] The petition therefore must be denied.

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2 References to "A" are to pages in Christofferson's Appendix to her petition.

3 This is in marked contrast to the petition of the Mission of Davis (No. 82-1025). If the Court were to uphold the arguments of the Mission of Davis as raised in its petition, there would be no new trial at all.

2. Christofferson's Petition Demonstrates The Necessity for Granting the Petition of The Mission of Davis

Although Christofferson's petition itself must be denied, it does highlight the underlying importance of the issues raised by the Mission of Davis in its petition. Christofferson acknowledges that this case has become the model for "hundreds of similar cases pending against this and other religious organizations throughout the United States . . ." (Pet. at 63), in which the courts have been asked to intervene in the relationship between churches and their members on matters of practice and belief. Christofferson obviously views this flood of litigation about religious beliefs and practices as salutary, and asks the Court to grant the writ to further encourage it. The Mission of Davis takes the view that such litigation is forbidden by the First Amendment, *Watson* v. *Jones*, 13 Wall. (80 U.S.) 679 (1872), and urges the Court to grant the writ so that, in the words of Justice Jackson, the Court may "have done with this business of judicially examining other people's faiths." *United States* v. *Ballard*, 322 U.S. 78, 95 (Jackson, J., dissenting). Christofferson complains that the opinion of the Oregon Court of Appeals is internally inconsistent in that it, on the one hand, rejects an inquiry into the good faith or sincerity of an entire religious organization, while on the other hand substitutes a "secular purpose" test by which the jury is asked to determine the purpose of a particular religious speaker. Christofferson objects that under the "purpose" test, juries will be unable to determine whether a church's assertion of a "religious" purpose is false, and she argues that legitimate fraud actions thus will be foreclosed.

The Mission of Davis likewise complains of the inconsistency and illogic of the Court of Appeals opinion. It argues, however, that the very ambiguity and uncertainty of the opinion will encourage litigation in violation of the First Amendment, and will create a vehicle for the exercise by juries of community prejudices and biases against minority religious

sects. It asserts that juries will be all too willing to ascribe non-religious and malevolent purposes to efforts to evangelize and fund raise for churches espousing novel and startling doctrine.

History, as recognized by this Court, supports the fears of the Mission of Davis. Indeed, the constitutional freedoms embodied in the First Amendment derive directly from the recognition of the proclivities of mankind to religious intolerance and discrimination, and of the necessity to protect minority sects against such tendencies. *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 640-42 (1943). The opinion of the Court of Appeals fails to provide the necessary zone of protection or "breathing space," *cf.*, *NAACP* v. *Button*, 371 U.S. 415, 433 (1963), necessary to ensure the free exercise of religious freedom.

3. The Court of Appeals Was Correct in Rejecting a Judicial Inquiry Into the Sincerity of a Church, Qua Church, in the Context of a Civil Action for Fraud

Christofferson asks this Court to review one of the few questions properly analyzed and decided by the Oregon Court of Appeals. The court held that it was improper for the trial court to have instructed the jury that it could determine the sincerity with which the church and mission defendants propounded their beliefs about the efficacy of the religious practice of auditing. The trial court instructed that if the jury found the Church or Mission to be insincere, it could go on to determine the truth or falsity of the representations themselves.

As the Court of Appeals below recognized, it is difficult even to conceptualize how a church, *qua* church, can hold beliefs at all, let alone in good or bad faith. In words of the Court of Appeals (A 110-A 111):

> . . . whose sincerity or good faith [can] the jury be asked to determine? Is the religious organization to be held liable if one of its ministers is less than a true believer? Or is it to be saved from liability if the individual who makes the statement truly believes, but others in the Church do not?

Faith is a personal, not a corporate matter. The dogma and religious practices of a hierarchial church are established by its governing body, and thereafter become articles of faith. Dissenting members have the choice either of leaving the church or of remaining despite an absence of belief in all the doctrines or practices of the church. As the Court recently has emphasized, such disagreement or differences cannot be the basis for a finding that the church itself does not subscribe to its own beliefs or practices in good faith. *Thomas* v. *Review Board*, 450 U.S. 707, at 715-716 (1981).

As Justice Jackson warned in his separate opinion in *United States* v. *Ballard*, 322 U.S. 78, at 92 (1944), a judicial inquiry into the sincerity of the religious belief of a church or religious organization necessarily is merged with a determination of the inherent validity of the doctrine espoused, a determination which is constitutionally prohibited. The trier of fact, rather than determining, for example, whether an individual really believes that Christ turned water into wine, must determine whether the Church itself conceivably could propound such doctrines in good faith. The answer undoubtedly will turn, if not upon the trier of facts' own belief system, then at least upon the trier of facts' familiarity with the dogma as being part of the belief system of some other recognized religion. One need only imagine the incredulity with which the then-modern world greeted the doctrine of the early Christians to understand the difficulties facing a new and novel religion undergoing such a judicial inquiry.

Christofferson argues that, in rejecting an inquiry into sincerity, the Oregon Court of Appeals failed to follow this

Court's opinion in *Ballard*. But the Oregon Court was correct in noting that *Ballard* merely left open the question,[4] over the objections of Justice Jackson who would have decided in that case that all inquiry must be prohibited.

In subsequent cases, the Court has strongly emphasized that an inquiry into even an individual's sincerity of belief, if permissible at all, can only be undertaken in furtherance of a "compelling government interest." *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963). Thus, in *Sherbert*, the Court prohibited inquiry into the sincerity of an assertion by an applicant for employment benefits that his religious beliefs prohibited him from accepting a job which required him to work on Saturdays. Similarly, in *Braunfeld* v. *Brown*, 366 U.S. 599 (1961), the Court warned against

> . . . a state-conducted inquiry into the sincerity of the individual's religious beliefs, a practice which would itself run afoul of the spirit of constitutionally protected religious guarantees.

366 U.S. at 609 (footnote omitted).

The Court made the point more explicitly in *N.L.R.B.* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979). In construing the National Labor Relations Act to bar jurisdiction over labor disputes internal to a church-operated institution, the Court held that a contrary construction of the Act would

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4 The Court remanded the case to the Court of Appeals to decide in the first instance all questions other than whether the truth or falsity of religious doctrines could be submitted to the jury. *Ballard*, 322 U.S. at 88. *See* Weiss, *Privilege, Posture and Protection: "Religion" in the Law*, 73 Yale L.J. 593, 599 and n.27 (1964). *See also Katz* v. *Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234, 236 (1977) ("the question of proof of [sincerity] was not settled by *United States* v. *Ballard*"). On remand, the Ninth Circuit divided 2-1 on the question of submitting evidence of the defendant's sincerity to the jury. *Ballard* v. *United States*, 152 F.2d 941 (9th Cir.) This Court reversed on other grounds, specifically acknowledging that the sincerity question had not been decided. 329 U.S. 187 (1946).

violate the First Amendment because it would improperly require the N.L.R.B. to inquire into the sincerity of assertions by clergy-administrators that their challenged actions were mandated by their religious creeds. *See* 440 U.S. at 492, 507. *See also Thomas* v. *Review Board*, 450 U.S. 707 (1981).

The only cases permitting inquiry into sincerity concern claims of conscientious objection to military service, where sincerity is a statutory requirement. *See, e.g., United States* v. *Seeger*, 380 U.S. 163 (1965). In those cases, the compelling governmental interest in raising an army and providing for the national defense, *see United States* v. *O'Brien*, 391 U.S. 367 (1968), has been held to justify a limited inquiry into the sincerity with which an individual holds a specific belief objecting to military service. In such cases, it is the subjective beliefs of the individual which are relevant, not the stated doctrines and dogma of a religious organization or church. *See also*, *Teterud* v. *Burns*, 522 F.2d 357 (8th Cir. 1975); *People* v. *Woody*, 61 Ca. 2d 716, 394 P.2d 813 (1964).

The Oregon Court of Appeals recognized the distinction between individual and corporate "sincerity", and properly held that there could be no judicial inquiry into the latter. Christofferson has presented no compelling grounds for review of that question.

We must re-emphasize, however, that the very logic by which the Court of Appeals rejected an inquiry into the good faith of the Mission compels rejection of the Court of Appeals secular purpose test. Petition of Mission of Davis, p. 12, n. 14. This is necessarily so because the subjective purpose of an entire organization is no more capable of being measured than is its sincerity or good faith. Thus, even if the subjective purpose of an individual person or parishioner can be measured,[5] his motivation cannot be attributed to the whole of an organized religion. The subjective purpose of an individual church mem-

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5 Petitioner did not allege that the individual defendant in this case made any false representations. Martin Samuels was sued solely in his official capacity as President of the Mission.

ber in making statements about church policy or practices is simply irrelevant to the question whether the church itself may be held liable in fraud on the theory that the statements were false. Once it is determined that the statements concerned religious beliefs or practices, no inquiry may be made into the truth or falsity of the statements no matter what the subjective purpose or sincerity of the person making the statements may have been.

CONCLUSION

The petition of Christofferson (No. 82-1036) must be denied. The petition of the Mission of Davis and Martin Samuels (No. 82-1025) should be granted.

Respectfully submitted,

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